rule of the common law,[16] and in a majority of the States to-day the lien of a judgment attaches not only to lands possessed by the debtor at the time of its docketing, but also to lands which he thereafter acquires.[17] In such a case, since no judgment against the debtor can affect the land until it does become his property, all those on record against him at that time attach as liens simultaneously; they all date from the vesting of title, and no one of them is entitled to priority though the judgment upon which it depends may have been docketed long before the others.[18]

Once it has been determined that several judgment liens are equal by virtue of their date of record or manner of commencement, the question then arises as to whether this equality may be disturbed by any subsequent proceedings of the judgment creditors. According to the weight of authority, superior diligence in bringing about the satisfaction of a particular claim secures for that one a preference.[19] In accordance with the principles laid down, is the decision in the recent case of *Hulbert* v. *Hulbert* (N. Y. Sup. Ct. 1914) 86 Misc. 662, in which an undivided share in certain real estate came by descent to one against whom several judgments had at different times before that been docketed; execution was issued upon one of the judgments, and a sale had thereunder during the pendency of the partition suit. It was decided that a holder of the sheriff's certificate of sale under the judgment was entitled to priority over the other judgment creditors in the distribution of the debtor's share of the proceeds of the partition sale. The courts will not, however, allow a senior judgment lien to be defeated by a sale under a junior,[20] and even though it be held that such a sale frees the property from the older lien, the latter is entitled to a prior satisfaction from the proceeds of the sale.[21]

Relief of Parties to an Illegal Contract.—All contracts which provide for the doing of acts that are against public policy, morality, or the law, are void and unenforcible.[1] The courts not only will not assist the parties to such agreements in attaining their unlawful ends, but generally refuse to afford relief of any sort to a complainant who, in establishing his cause of action, must of necessity set forth an

---

[16]4 Kent, Comm., *435, 436.

[17]1 Black, Judgments (2nd ed.) § 432.

[18]Michaels *v.* Boyd (Ind. 1848) Smith 100; Cayce *v.* Stovall (1874) 50 Miss. 396; Matter of Hazard (N. Y. 1893) 73 Hun 22; see note to Moore *v.* Jordan (N. C. 1895) 42 L. R. A. 209, indicating a slight conflict of authority. But the judgment lien will be postponed to a purchase money mortgage given at the time of making the conveyance. Cowardin *v.* Anderson (1883) 78 Va. 88; Curtis *v.* Root (1859) 20 Ill. *53; Scott etc. Co. *v.* Warren (1857) 21 Ga. 408. A mortgage given at the same time for other than the purchase money, however, is subordinate to the judgment. Weil *v.* Casey (1899) 125 N. C. 356.

[19]Lowry *v.* Reed (1883) 89 Ind. 442; Adams *v.* Dyer (N. Y. 1811) 11 Johns. *347; Bruce *v.* Vogel, *supra*; *cf.*, as to after-acquired lands, Kisterson *v.* Tate (1895) 94 Ia. 665.

[20]The land may be resold to satisfy the older lien. Littlefield *v.* Nichols (1871) 42 Cal. 372; see Jackson *v.* Holbrook (1887) 36 Minn. 494.

[21]Matthews *v.* Nance (1897) 49 S. C. 389.

[1]2 Parsons, Contracts (9th ed.) *746.

illegal purpose as the foundation for his claim.[2] These firmly established principles are frequently stated in the form of the maxims, *Ex dolo malo non oritur actio,* and *In pari delicto potior est conditio defendentis.* While giving a concise and convenient rule-of-thumb for cases of this sort, these maxims must be cautiously applied, for—like most others—they are subject to important limitations and exceptions. The general rule, then, is that neither law nor equity will intervene in behalf of a party to an illegal contract; the wrongdoers are left unaided in whatever position their wrongful transactions have placed them. Relief is refused, not for the purpose of bestowing any benefit upon the defendant, but wholly upon considerations of public interest;[3] no rights are allowed the parties, so as to avoid any recognition of the unlawful agreement which might tend to give it validity or place the courts in the position of *particeps criminis.* Argument is not needed to support the justice of the law's consistent refusal to assist in the enforcement or affirmance of an illegal contract. But what of the case where the complaining party seeks to avoid or disaffirm the contract? Does public interest here, too, demand a policy of absolute non-intervention by the courts? The decisions in point are by no means uniform, but certain broad principles may be formulated which seem to govern most of the cases, and which have received recognition from the highest authorities.

Where the contract has been completely performed, so that its unlawful object is consummated, and the parties are regarded as in equal guilt, the general rule, denying relief, is applicable.[4] But if, although there has been a partial performance of the contract, its illegal purpose has not yet been accomplished, according to the preponderance of authority a *locus poenitentiae* remains, and a party who has paid money, delivered goods, or conveyed land pursuant to the agreement, may repudiate the entire transaction and, with the help of the court, recover back the property transferred.[5] The rule in most jurisdictions seems to be that if the unlawful enterprise has been partially carried out, no action will lie for undoing what has been done under the contract, and only where the evil act may be wholly averted will the courts aid the repentant party.[6] This doctrine of *locus poenitentiae* is justified on the ground that public policy requires the courts, wherever possible, to prevent the consummation of illegal proceedings by encouraging repentance.[7]

Another limitation upon the general rule obtains in certain cases where the parties, in the light of the surrounding circumstances, are not regarded as being *in pari delicto.* In such cases, whether the contract be executed or executory, the more excusable party may sue for relief against the transaction, whenever public policy is considered

---

[2]Crichfield *v.* Bermudez etc. Co. (1898) 174 Ill. 466; Emery *v.* Candle Co. (1890) 47 Ohio St. 320.

[3]See Branham *v.* Stallings (1895) 21 Colo. 211, 215.

[4]Hill *v.* Freeman (1882) 73 Ala. 200; St. Louis etc. R. R. *v.* Terre Haute etc. R. R. (1892) 145 U. S. 393, 407.

[5]Souhegan Nat. Bank *v.* Wallace (1881) 61 N. H. 24; Wassermann *v.* Sloss (1897) 117 Cal. 425; Spring Co. *v.* Knowlton (1880) 103 U. S. 49, reversing Knowlton *v.* Congress etc. Co. (1874) 57 N. Y. 518.

[6]Hooker *v.* De Palos (1876) 28 Ohio St. 251; Ullman *v.* St. Louis Fair Assn. (1902) 167 Mo. 273, 287.

[7]See Stacy *v.* Foss (1841) 19 Me. 335, 338.

to be advanced thereby.[8] Actions where the plaintiff has been induced to enter into the agreement through fraud, oppression, or undue influence on the part of the defendant, and is, therefore, not to be regarded as *in pari delicto* with the latter, are illustrative of this class of exceptions.[9] Other examples are cases in which the complaining party is one of a class of persons for whose protection the statute, which made the agreement in question *malum prohibitum,* was passed; in such suits the plaintiff is always allowed to recover property which he has transferred under the prohibited agreement.[10]

Still a third exception to the general rule is laid down by many authorities, namely, that wherever public policy requires the intervention of the courts, even though the parties are in equal guilt, the courts will intervene and grant such relief as may best serve the public interest.[11] In the decisions grouped under this exception,—if, indeed, it deserves to be called an exception,—the true theory which underlies the entire subject of relief from illegal contracts, is clearly indicated. As was pointed out in the recent case of *Hatch* v. *Gilchrist* (Ind. 1914) 106 N. E. 694, the question of the intervention of equity to relieve individuals from the effects of unlawful agreements into which they have entered, is ultimately dependent on the best interests of the public and rests in the discretion of the court. The general rule and its exceptions, which we have just considered, are useful, though artificial, tests, which may assist the court in exercising its discretion. The final inquiry, however, remains in all cases the same: "Has the complainant made such a case as would, were he innocent, entitle him to relief? And if so, does the best interest of society require that relief shall be afforded, notwithstanding the guilt of the party?"[12]

MARTIAL LAW.—The term martial law is often loosely used to mean any one of three systems of authority, to wit, (1) law for the government of military and naval forces; (2) law enforced by military or naval power in time of war, both in conquered territory and in disaffected regions at home; and (3) law enforced by the military authorities in time of peace when troops are used for the suppression of internal disorder. The first is statutory,[1] and aside from the mooted question as to how far decisions of courts-martial in cases affecting

[8]Reynell *v.* Sprye (1852) 1 De Gex, M. & G. *660, *679; Roman *v.* Mali (1875) 42 Md. 529. A distinction is sometimes drawn between cases where the wrong contemplated is *malum in se* and where it is mere *malum prohibitum,* relief being granted in only the latter class of cases. See Tracy *v.* Talmage (1856) 14 N. Y. 162; Duval *v.* Wellman (1891) 124 N. Y. 156. This seems, however, to be not an independent rule, but rather a result of the application of the principle that relief will be granted the guilty plaintiff only when public interest demands it.

[9]See Nat. Bank & Loan Co. *v.* Petrie (1903) 189 U. S. 423.

[10]As where a statute provides for the recovery of money lost on a bet or wager; Mitchell *v.* Orr (1901) 107 Tenn. 534; Kruse *v.* Kennett (1899) 181 Ill. 199; or where a statute penalizes only one of the parties, so that the other is not to be regarded as *in pari delicto.* White *v.* Bank (Mass. 1839) 22 Pick. 181.

[11]2 Pomeroy, Eq. Jur. (3rd ed.) § 941. See Lester *v.* Howard Bank (1870) 33 Md. 558; Hale *v.* Sharp (1867) 44 Tenn. 275.

[12]See Porter *v.* Jones (1869) 46 Tenn. 313, 321.

[1]*Cf.* N. Y. Consol. Laws, c. 36.